

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P.,
and SONTERRA CAPITAL MASTER FUND, LTD., on
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITIBANK, N.A., CITIGROUP INC., BANK OF
AMERICA CORPORATION, BANK OF AMERICA, N.A.,
JPMORGAN CHASE & CO., JPMORGAN CHASE BANK,
N.A., THE ROYAL BANK OF SCOTLAND PLC, THE
ROYAL BANK OF SCOTLAND GROUP PLC, RBS
SECURITIES JAPAN LIMITED, UBS AG, UBS
SECURITIES JAPAN CO. LTD., ING GROEP N.V., ING
BANK N.V., ING CAPITAL MARKETS LLC, BNP
PARIBAS, S.A., BNP PARIBAS NORTH AMERICA, INC.,
BNP PARIBAS SECURITIES CORP., BNP PARIBAS
PRIME BROKERAGE, INC., OVERSEA-CHINESE
BANKING CORPORATION LTD., BARCLAYS PLC,
BARCLAYS BANK PLC, BARCLAYS CAPITAL INC.,
DEUTSCHE BANK AG, CREDIT AGRICOLE
CORPORATE AND INVESTMENT BANK, CREDIT
AGRICOLE S.A., CREDIT SUISSE GROUP AG, CREDIT
SUISSE AG, CREDIT SUISSE INTERNATIONAL,
STANDARD CHARTERED BANK, STANDARD
CHARTERED PLC, DBS BANK LTD., DBS GROUP
HOLDINGS LTD., DBS VICKERS SECURITIES (USA)
INC., UNITED OVERSEAS BANK LIMITED, UOB
GLOBAL CAPITAL, LLC, AUSTRALIA AND NEW
ZEALAND BANKING GROUP, LTD., ANZ
SECURITIES, INC., THE BANK OF TOKYO-
MITSUBISHI UFJ, LTD., THE HONGKONG AND
SHANGHAI BANKING CORPORATION LIMITED,
HSBC BANK USA, N.A., HSBC HOLDINGS PLC, HSBC
NORTH AMERICA HOLDINGS INC., HSBC USA INC.,
MACQUARIE BANK LTD., MACQUARIE GROUP LTD.,
COMMERZBANK AG, AND JOHN DOES NOS. 1-50,

Defendants.

Docket No.: 1:16-cv-05263-AKH

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUR-REPLY**

Plaintiffs FrontPoint Asian Event Driven Fund, L.P. and Sonterra Capital Master Fund, Ltd. respectfully move this Court for an order granting leave to file a brief sur-reply.

When a party has raised new arguments in a reply to an opposition, the Court may grant leave to file a sur-reply in response to those new arguments. *Grocery Haulers, Inc. v. C & S Wholesale Grocers, Inc.*, No. 11-cv-3130 (DLC), 2012 WL 4049955, at *6 (S.D.N.Y. Sept. 14, 2012) (“Courts have broad discretion to consider arguments in a sur-reply, particularly when new arguments are put forth in a reply brief.”) (internal citations omitted); *see also Correspondent Servs. Corp. v. J/VW Inv., Ltd.*, No. 99 CIV 8934 RWS, 2004 WL 2181087, at *7 (S.D.N.Y. Sept. 29, 2004), *judgment entered sub nom. Correspondent Servs. Corp. v. J.V.W. Inv. Ltd.*, 232 F.R.D. 173 (S.D.N.Y. 2005), *and aff’d sub nom. Correspondent Servs. Corp. v. First Equities Corp. of Florida*, 442 F.3d 767 (2d Cir. 2006) (granting leave to file sur-reply “so as to permit comprehensive adjudication of the issues raised.”).

In their reply, Defendants raised several new challenges to Plaintiffs’ standing and capacity to sue, based on the content of the Assignments that Plaintiffs submitted with their opposition. *See* Declaration of Geoffrey M. Horn, ECF No. 250, Exs. 34-35 (requested to be filed under seal). For example, Defendants argue for the first time that this Court should dismiss the Complaint because

[REDACTED]

[REDACTED]

[REDACTED] Defs. Reply, ECF No. 253, at 9. Plaintiffs do not have to “demonstrate” anything at this stage of the case; rather, fact-based questions like this one cannot be resolved on the pleadings. *See Anderson News L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 185 (2d Cir. 2012) (“Fact-specific questions cannot be resolved on the pleadings”); *Bauer v. Venman*, 252 F.3d 625, 642 (2d Cir. 2003) (holding that attacks on the “factual underpinnings” of a plaintiff’s standing must be rejected at the pleading stage).

If the Court is nonetheless inclined to consider these arguments, Plaintiffs request leave to file a memorandum of no more than ten pages, along with supporting exhibits, under seal, which will show: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Plaintiffs will file their sur-reply no later than seven days after the Court grants this motion.

Dated: December 28, 2017
White Plains, New York

Respectfully submitted,

LOWEY DANNENBERG, P.C.

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